

SCOTTISH POLICE  
AUTHORITY

<b>Meeting</b>	<b>Public SPA Board Meeting</b>
<b>Date</b>	<b>15 December 2016</b>
<b>Location</b>	<b>Assembly Room, Tulliallan, Alloa</b>
<b>Title of Paper</b>	<b>Scottish Crime Campus - Draft Memorandum of Terms of Occupancy (MOTO) and FM Memorandum of Understanding</b>
<b>Item Number</b>	<b>11.1</b>
<b>Presented By</b>	<b>Colette Sherry Head of Commercial Services</b>
<b>Recommendation to Members</b>	<b>For Approval</b>
<b>Appendix Attached:</b>	<b>YES</b>

## PURPOSE

The purpose of this report is to invite members to consider approving the conclusion of the terms of:

(1) A Memorandum of Terms of Occupancy ("MOTO") with the Scottish Ministers permitting occupancy by Police Scotland and the Forensic Services respectively of the Scottish Crime Campus, Gartcosh for an initial period of (6 January 2014-31 March 2019) continuing thereafter for a further 3 year periods unless or until terminated by an occupier in writing, subject to an annual licence payment of £209,130 for Police Scotland and £199,307 for Forensic Services and an initial Service Charge of £1,306,548 for Police Scotland and £1,247,740 for Forensic Services and

(2) A Memorandum of Understanding ("MOU") among the Scottish Ministers, the Scottish Police Authority and the Chief Constable detailing the basis upon which Police Scotland personnel will deliver or cause to be delivered facilities management (FM) services at the Campus, the cost of which FM services will be recouped from the Campus occupiers pursuant to their individual MOTOs. Members are referred to Annexes One and Two of this Report for the intended key provisions within the MOTO and MOU.

## 1 BACKGROUND

SPA Public Board  
Scottish Crime Campus - Draft Memorandum of Terms of Occupancy (MOTO) and FM Memorandum of Understanding  
15 December 2016

- 1.1 Following consideration of this report at the Finance and Investment Committee at its meeting on 7th September the Chair of the Committee Elaine Wilkinson agreed that the report be taken forward to the Board.
- 1.2 The Scottish Crime Campus at Gartcosh is owned by the Scottish Ministers having been constructed and delivered in consequence of three building contracts awarded by and on behalf of the Scottish Ministers. The Campus is occupied by Police Scotland, SPA Forensic Services, Crown Office and Procurator Fiscal Service, National Crime Agency and Her Majesty's Revenue and Customs. In addition to the discrete areas of the building occupied by each of the foregoing agencies, the agencies share common areas and facilities within the Campus.
- 1.3 In line with the practice adopted by both the Scottish and UK Governments in respect of government owned buildings occupied by other Crown or public sector bodies, it is proposed occupancy of the Gartcosh facility will be based on a Memorandum of Terms of Occupation ("MOTO"). A MOTO does not and is not intended to create legally binding and enforceable rights between the parties. The rationale being that bodies within the same "family" should be able to avoid / resolve conflict without requiring to revert to the court. The primary governance body and arbiter of potential disputes would be the Management Board, consisting of representatives from the original five occupant organisations, Scottish Government and the Non-Executive Director from the Scottish Business Resilience Centre and which is chaired by ACC OCCTU.
- 1.4 Each occupier at Gartcosh is expected to enter into an individual MOTO with the Scottish Ministers. The key elements of the proposed MOTO are detailed at Annex One. Final MOTO terms will be dependent upon the final terms of the Facilities Management Memorandum of Understanding ("MOU") detailed below.
- 1.4 The MOTOs anticipate that the Campus will be managed and appropriate FM services delivered through an agent appointed by the Scottish Ministers with service costs recharged to occupiers through a Service Charge that will be collected by the appointed agent.
- 1.5 Prior to completion of the facility and before police reform, it had been agreed between the Government and the then Scottish Police Services Authority (SPSA) that SPSA would undertake the role of

agent. As a consequence of police reform and the decision that Estates personnel would be placed within Police Scotland as police staff under the direction and control of the Chief Constable, a request was made to the then Chief Constable for Police Scotland to undertake the FM agent's role.

- 1.6 Notwithstanding there is yet no written FM agreement in place, Police Scotland has undertaken that role since occupation of the facility by the various agencies.
- 1.7 Police Scotland, SPA (Forensics) and the other Campus occupiers have been in occupation since December 2013. It is understood that as yet no MOTOs have been concluded and signed; Scottish Government ("SG") personnel (Justice and Property Departments) wish to have agreement on the FM agency terms before MOTOs are concluded with the Campus occupiers to ensure the FM services detailed in the MOTO align with any FM agreement. Police Scotland, through the auspices of SPA awarded contracts, have been delivering various FM and other services and the occupiers have been invoiced for and have made payments as anticipated by the proposed MOTOs.
- 1.8 Initially with the approval of the then Interim Head of Legal Services at SPA, Police Scotland's Interim Head of Legal Services instructed DLA Piper to act on behalf of both the SPA and Police Scotland in negotiations with SG on the terms of the MOTO (for both Police Scotland and SPA Forensics) and the proposed agency agreement. However, once it became clear from discussions with SG personnel that any documentation between the parties should be neither legally binding nor enforceable, to avoid further external legal expenses, discussions on the documents' terms have been conducted by Police Scotland Legal Services.
- 1.9 As indicated above, it is considered by SG a contractual arrangement between the Scottish Ministers and the Campus occupants or between the Scottish Ministers and Police Scotland as FM agent is not appropriate and that any disputes should and will be resolved amicably and not through judicial process. In the circumstances it is now appropriate to submit for consideration details of the proposed documentation that would regulate occupancy of and service provision at the Scottish Crime Campus.

## **2. FURTHER DETAIL ON THE REPORT TOPIC**

- 2.1 The MOTO, anticipates the Authority and Police Scotland will pay a licence fee (similar to rent) in respect of their occupancy and a contribution to the FM costs, a Service Charge.
- 2.2 FM services will be provided in accordance with and subject to the terms of a Memorandum of Understanding. Police Scotland Estates personnel will deliver the required FM Services at the Campus (details of which are provided in Annex 2) through SPA awarded contracts that provide such services to other properties within the Authority's estate.
- 2.3 The efficacy of the MOTO and the MOU relies upon the goodwill of the parties to comply with their terms. As indicated above the expectation is that any disputes will be resolved amicably with, if necessary, matters being referred for consideration and resolution by the Campus Management Board.
- 2.4 If the Campus is to continue as a successful model of multi- agency working, it is considered important that the building and its environs are managed and kept in good order and repair. Police Scotland wishes to continue to play its part in the success of the Campus and to assist in delivery of the services required that permit the building to operate effectively and efficiently.
- 2.5 The Police and Fire Reform(Scotland) Act 2012 at section 87(3)(a) permits the Authority, with the consent of the Chief Constable, to make arrangements for Police Scotland to provide services (other than police services) to any other public body or office holder. Undertaking the FM agent's role and providing services as anticipated by the MOU would be permissible under the 2012 Act.
- 2.6 A decision from SPA members is required as to whether, given the nature of the relationship between SPA/Police Scotland and SG, occupancy and service provision at the Campus should proceed on the basis of non-contractual arrangement and the terms of the proposed MOTO and MOU can be finalised and signed off on that basis.

### **3. FINANCIAL IMPLICATIONS**

- 3.1 Under the proposed MOTO the licence fee payable for the areas occupied by Police Scotland and SPA Forensics are £209, 130.00 and £199,307.00 (there is no VAT on the licence fee) for Police Scotland and Forensics respectively and the Service Charge payable for 2015-2016 is illustrated in the table below:

SPA Public Board  
Scottish Crime Campus - Draft Memorandum of Terms of Occupancy (MOTO) and FM Memorandum of Understanding  
15 December 2016

Partner	% portion	Service Charge £
Police	38.88	1,306,548
SPA FS	37.13	1,247,740
HMRC	18.55	623,366
NCA	2.95	99,134
COPFS	2.49	83,676
<b>Total</b>	100	3,360,464

- 3.2 The Service Charge figures are inclusive of VAT and have been calculated based on occupied areas (the agreed default apportionment figure).
- 3.3 In addition to the third party service provider costs that are recouped via the Service Charge payments made by Campus occupiers, the salary costs of two members of Police staff are also recouped.
- 3.4 There is provision within the MOU that SG will reimburse the SPA for any loss suffered including in the event of underpayment or non-payment of the Service Charge.

#### **4. PERSONNEL IMPLICATIONS**

- 4.1 The Campus is the place of work for some 590 of police officers and staff and 250 Forensics personnel. These figure are indicative and do not include any vacancies or embedded staff.
- 4.2 Currently the work of FM SG agent is undertaken primarily by two members of police staff within Police Scotland's Estates department with support and assistance from other members of police staff and external service providers.

#### **5. LEGAL IMPLICATIONS**

- 5.1 The Authority has powers under the Police and Fire Reform (Scotland) Act 2012 to provide buildings and facilities for policing functions and consequently a power to conclude a MOTO with the Scottish Ministers for that purpose. As indicated above, the provision of FM Services by police staff is also considered consistent with the Authority's statutory powers.

- 5.2 The proposed documentation intended to regulate campus occupancy and FM service provision lacks contractual status. Consequently as occupiers neither SPA nor Police Scotland would have the usual protections available under a Lease but neither do they have some of the onerous tenant's obligations that are a feature of a commercial lease.
- 5.3 Financial commitments, both in terms of the MOTO and to ensure delivery of the required FM services, will require to be made by the Authority without the protection of binding and enforceable contracts with Scottish Ministers. Notwithstanding the relationship between the Authority and Scottish Ministers proceeding in such fashion may ultimately involve legal risk but endeavours have and will continue to be made in terms of discussions with SG personnel to obtain acknowledgements and undertakings on behalf of Scottish Ministers that contractual remedies under building contracts will be exercised and that the FM agent's role will not involve financial detriment for SPA/Police Scotland should payment of service charge not be forthcoming from other Campus occupiers.

## **6. REPUTATIONAL IMPLICATIONS**

- 6.1 It is likely that a failure on the part of either party to observe and comply with the provisions of the MOTO or the MOU would harm not only the reputations of such party but also the reputation of the Campus as a model of partnership working.

## **7. SOCIAL IMPLICATIONS**

- 7.1 There are no social implications associated with this paper.

## **8. COMMUNITY IMPACT**

- 8.1 Whilst there are no direct community implications associated with this paper, Police Scotland personnel at the Campus have been and will continue to engage with the local community council over matters of mutual interest.

## **9. EQUALITIES IMPLICATIONS**

- 9.1 There are no equality implications associated with this paper.

## **10. ENVIRONMENTAL IMPLICATIONS**

10.1 There are no environmental implications associated with this paper.

## **RECOMMENDATIONS**

Members of the Scottish Police Authority are invited to :

1. Approve the conclusion of (a) Memoranda of Terms of Occupancy ("MOTOs") with the Scottish Ministers permitting occupancy of the Scottish Crime Campus by Police Scotland and Forensic Services respectively for an initial period of (6 January 2014-31 March 2019) continuing thereafter for a further 3 year periods unless or until terminated by an occupier in writing, subject to an annual licence payment of £209,130 for Police Scotland and £199,307 for Forensic Services and an initial Service Charge of £1,306,548 for Police Scotland and £1,247,740 for Forensic Services.

2. Subject to such approval, and as part of service provision to the Authority by police staff permitted under section 83(2) of the Police and Fire Reform (Scotland) Act 2012, to instruct police staff (including personnel within Police Scotland's Legal and Corporate Services Departments) on behalf of the Authority to agree and finalise with Scottish Government personnel the terms of the MOTOs and the MOU and thereafter to submit the MOTOs and MOU for review and signature by the Accountable Officer on behalf of the Authority.

## **Annex One**

SPA Public Board  
Scottish Crime Campus - Draft Memorandum of Terms of Occupancy (MOTO) and FM Memorandum  
of Understanding  
15 December 2016

Memorandum of Terms of Occupancy – Scottish Crime Campus – Key terms:

- Occupancy Rights – defined by reference to area over which exclusive rights are to be given and shared areas.
- Duration – deemed from 6 January 2014 until 31 March 2019 extended automatically for consecutive 3 year periods unless and until a Notice to Vacate has been served by either party on one full financial year's notice in writing.
- Charges payable – Licence fee (broadly equating to rent) and subject to 5 yearly reviews and Service Charge – portion of service costs for whole campus.
- Details of the Services to be provided by Scottish Ministers through their FM Agent.
- Mechanism for calculating the licence fee and service charge and invoicing.
- Permitted Use.
- Governance / management board arrangements.
- Scottish Ministers' responsibilities and rights.

#  
**Annex Two**

Memorandum of Understanding regarding FM Service provision at the Scottish Crime Campus - Services to include:

- External and structure repair and decoration;
- External maintenance;
- Internal repair and decoration;
- Reinstatement works on termination of occupancy;
- Mechanical and Electrical building services;
- Statutory and other examinations and inspections;
- Utilities;
- Security, catering and cleaning;
- Waste collection and recycling, pest control, snow clearing and gritting;
- Condition surveys, fire inspections and certifications;
- Provision of an FM team to include Facilities Manager, reception/administrative support, technicians, handyman and porters, mail room services;
- Furniture and fittings to common parts;
- Portable apparatus testing; and
- Provision of TV and public entertainment licences.